

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

In re application of:) Group Art Unit: 3723
Donald V. Edwards) Examiner: Robert C. Watson
Filed: March 23, 2004) Attorney Docket: SIM 04023
Serial No. 10/807,225) September 11, 2007

For: LIFTER FOR FURNITURE AND THE LIKE

COMMISSIONER OF PATENTS
P.O. Box 1450
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Sir:

The following appeal brief for Appellant under Rule 1.192 is submitted pursuant to the Notice of Appeal filed June 24, 2006 in the above-identified application and further in response to a Notification of Non-Compliant Appeal Brief mailed on August 28, 2007.

(i) Real Party in Interest

The real party in interest of the present application is
SIMTEC, CO.

(ii) Related Appeals and Interferences

There are no appeals or interferences pending which directly affect this application.

(iii) Status of Claims

Claims 1-5, 9-12, 14-16 and 27 are currently pending in the application. Claims 1-5, 9-12, 14-16 and 27 were finally rejected in an Office Action dated March 20, 2006. Claims 1-5, 9-12, 14-16 and 27 are being appealed.

(iv) Status of Amendments

A Restriction/Election was issued on November 08, 2005 which required election of a single disclosed species. Applicant responded on November 18, 2005 and elected to prosecute claims 1-5, 9-12, 14-16 and 27. The remaining claims were withdrawn.

A first Office Action was issued on March 20, 2006 in which claims 1-5, 9-12, 14-16 and 27 were rejected. Applicant requested reconsideration of the rejection in an amendment filed on February 22, 2006.

A final Office Action was issued on March 20, 2006 in which claims 1-5, 9-12, 14-16 and 27 were again rejected. Applicant submitted an amendment that was filed on May 11, 2006 in which a minor amendment was made to claim 1. However, the Examiner did not enter the amendment because the Examiner said it would raise new issues.

An Advisory Action was issued on May 24, 2006. Applicant filed a Notice of Appeal on June 26, 2006.

(v) Summary of claimed subject matter

In a first aspect the present invention, as defined in claim 1, provides an apparatus 10 for applying an upward pressure to at least a portion of an object which is at least sufficient to lift such object a predetermined distance. Basically the apparatus 10 is used in lifting at least a portion of one of furniture, appliances and movable wall structures. The apparatus 10 comprises at least one elongated rod member, generally designated 2, formed of a first predetermined material and having a first predetermined shape. There is a first means, generally designated 20, engageable at a first end thereof 21, with a first end 4 of elongated rod member 2 for gripping the apparatus 10 during use. It is presently preferred that such second end 22 of the first means 10 includes a rubber grip 24. A second means, generally designated 30, includes an elongated leg member 32 that is engageable at a first end 31 thereof with a second end 6 of such elongated rod member 2 and extending outwardly therefrom for engaging such item to be lifted. The apparatus 10 further includes a third means, generally designated 40, that is disposed closely adjacent an intersection of the second end 6 of the elongated rod member 2 and the first end 31 of second means 30, the third means 40 being positioned for providing a substantially stationary means for sliding, supporting and pivoting the apparatus 10. As used in the present application and in the claims substantially stationary means that in most instances the

apparatus will pivot and lift furniture without any appreciable movement. However, it is possible if the lifting point on the furniture or the like is elevated relative to the floor or if the item being lifted is raised a relatively high distance then the substantially stationary third means 40 may slide slightly when the apparatus is tilted fully in raising the furniture. In an embodiment of the invention such third means 40 is substantially a base member 42. Such base member 42 has rubber or plastic tips 44 on each end to prevent scratching a floor. In a presently preferred embodiment of the invention such base member 42 is positioned substantially perpendicular to such second means 30 on an underside of second means 30. As stated previously such third means 40 is positioned closely adjacent an intersection of the second end 6 of the elongated rod member 2 and the first end 31 of second means 30. In this manner the third means 40 provides essentially a fulcrum for the apparatus 10 to pivot.

The above summary of the claimed subject matter is found in the specification on Page 9, line 25 through Page 11, line 14.

In a second aspect the present invention, as defined in claim 27, provides an apparatus, generally designated 60, for applying an upward pressure to at least a portion of an object to be lifted which is at least sufficient to lift such object a predetermined distance. The apparatus 60 comprises a first elongated rod member 62 which is formed of a first predetermined material and has a predetermined shape. There is a first means 70 that is engageable

with the first end of the first elongated rod member 62. Such first means 70 is basically a handle member for gripping the apparatus 60 during use. A second elongated rod member 64 is one of formed integrally with the first elongated rod member 62 as a single piece or is engageable as a separate piece at a first end thereof to a second end of the first elongated rod member 62.

An elongated object engaging means 80 is engageable with the second elongated rod member 64 closely adjacent a second end thereof for engaging at least a portion of a bottom surface of such object to be lifted. Such object engaging means 80 exerts an upward pressure on such object being lifted and has a predetermined surface bearing area 82 which is at least sufficient to prevent the apparatus 60 from tipping during use. The above is illustrated in Figures 22, 23 and 24. The summary of this embodiment is found on page 15, line 15 to page 16, line 9.

(vi) Grounds of Rejection

The first ground of rejection by the Examiner was the rejection of claims 1-2, 4, 9-12, 14, 16 and 27 under 35 U.S.C. 102(b) as being clearly anticipated by Younick (U.S. Patent No. 1,570,192).

The second ground of rejection by the Examiner was the rejection of claims 3,5,12 and 15 under 35 U.S.C. 103(a) as being unpatentable over Younick in view of Morgan (Examiner probably meant Morganberger U.S. Patent No. 3,700,212) and Christensen et

al. (U.S. Patent No. 6,354570).

(vii) Argument

B. Appellant's Arguments

First Ground of Rejection

The first ground of rejection by the Examiner was the rejection of claims 1-2, 4, 9-12, 14, 16 and 27 under 35 U.S.C. 102(b) as being clearly anticipated by Younick (U.S. Patent No. 1,570,192).

With respect to the first issue the Examiner states, "Younick shows an apparatus for applying upward pressure to an object. The apparatus includes a first means 6, an elongated rod 1, a second means 4, and a third means 7. The third means 7 'engages the support 3' (Younick, column 2, line 13). This is construed by the examiner as engaging the support 3 always even during a prying operation. Clearly, the tool operates by third means 7 supporting and pivoting said apparatus. Even if third means 7 supported and pivoted the apparatus for a small infinitesimal time it would read on the claim language. Since the third means 7 'engages the support 3' it must necessarily be on the underside of the second means. The bottom of the third means 7 is at least coplanar with the underside of the second means which is interpreted as being 'on the underside of the second means 4' since this is broadly written phrase subject to various interpretations. Since the Younick device is a 'wreaking bar', the

examiner takes Official Notice that wrecking bars are commonly made of steel and that steel would have the strength characteristics recited in the claims."

Applicant must point out that the present application provides in claim 1 that ".....said substantially stationary third means being positioned for supporting and pivoting said apparatus." And further in claim 2, "...said substantially third means is positioned substantially perpendicular to said second means on an underside of said second means." The underlining is for emphasis. The third means is positioned so as to act as a pivot point when the apparatus is used to lift furniture. The third means 7 of Younick is not a pivoting means. Younick teaches, "It has been found that bars of this character, during a prying operation, often break the support 3 or twist to one side. To obviate this difficulty the bar is provided adjacent its curved portion 2 with outwardly extending arms 7, which arms are preferably formed integral with the bar and engage the support 3 at opposite sides of the bar, thereby preventing twisting of the bar from one side or the other during a prying operation and engaging the support 3 over a larger area and consequently relieving the strain from a single point on the support, thereby preventing breaking of the support." (Page 1, lines 45-59).

The third means of Younick is not a pivoting means nor can it act as such since such third means 7 is on the same plane as the curved portion of the bar 2 and is not disposed below the bar as

is the third means 40 of the present invention so as to act as a fulcrum and provide a pivot point. As seen in Figure 2 the bar 7 of Younick only provides lateral support to prevent the wrecking bar from twisting when the handle of the bar is lowered to raise the flattened end 4 during a prying operation.

It is well settled patent law for a reference to anticipate an invention, such reference must show each and every limitation of the claim. This is not the case here.

Claim 2 is clearly not anticipated by Younick, since as stated previously claim 2 clearly states that such third means is "positioned substantially perpendicular to said second means on an underside of said second means." The bar 7 of Younick is not on the underside of bar 2.

It is strictly a conclusion drawn by the Examiner and not shared by the Applicant that "Since the third means 7 engages the support 3' it must necessarily be on the underside of the second means." This is not borne out by Figure 2 of Younick.

Dependent claims 4, 9-12, 14, and 16 are all dependent on claim 1. There is no teaching in Younick about covering the flattened end 4 with a plastic sleeve as is claimed in claim 12 which states "...said apparatus further includes a plastic sleeve to cover said taper to prevent damage to such item to be lifted."

This is clearly not taught by Younick and since his bar is a wrecking bar there would be no motivation to put a plastic covering over the end of the bar.

Similarly, claim 14 provides that such stationary third means further includes a third predetermined material. Again this is not taught in Younick. Younick does not teach any specific material; however as the Examiner stated, "Since the Younick device is a 'wreaking bar', the examiner takes Official Notice that wreaking bars are commonly made of steel and that steel would have the strength characteristics recited in the claims." There is no teaching of the third means being another material. Again as stated previously for Younick to anticipate the present invention it must teach each and every limitation of the claimed invention. This is not the case with the teaching of Younick.

With respect to the rejection of independent claim 27, claim 27 includes the following: "(d) an elongated object engaging means engageable with said second elongated rod member closely adjacent a second end thereof for engaging at least a portion of a bottom surface of such object to be lifted and for exerting an upward pressure to such object, said elongated object engaging means having a predetermined surface bearing area which is at least sufficient to prevent sidewise tipping of said apparatus during use."

There is no teaching in the cited reference of the second end of the elongated engagement means having "...a surface bearing area which is at least sufficient to prevent sidewise tipping of said apparatus during use." The teaching of Younick provides outwardly extending arms 7 to relieve the strain from a single

point but there is no teaching in Younick of the surface bearing area being sufficient to prevent sidewise tipping. Therefore, Applicant respectfully requests the Board to reverse the Examiner's rejections of claims 1-2, 4, 9-12, 14, 16 and 27 under 35 U.S.C. 102(b) as being clearly anticipated by Younick (U.S. Patent No. 1,570,192).

Second Ground of Rejection

The second ground of rejection by the Examiner was the rejection of claims 3,5,12, and 15 under 35 U.S.C.103(a) as being unpatentable over Younick in view of Morgan and Christensen et al.

With respect to the second ground of rejection the Examiner stated, "Morgan teaches (As stated previously the Examiner probably meant Morganberger US Patent No.3,700,212) that various object and user hand engaging portions of the lifting lever may include grips or caps to cover the extremities of these engaging portions. To provide grips or caps on any of the engaging portions of Younick would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Morganberger.

Christiansen et al teaches that the object engaging portions of a lever may be made from rubber or plastics. The examiner takes Official Notice that a common plastic is polyethylene. To make the engaging portion in Younick from polyethylene would have been obvious at the time of the invention in view of the teachings

of Christenson et al."

Applicant must again mention that Younick teaches a wreaking bar and there would be no motivation to put plastic caps on the ends of such stationary third means as is claimed in claim 3 of the present invention. Morganberger teaches a hand grip 60 and resilient suction cups 40 similar to the rubber cup shaped tips provided for the ends of canes and chair legs or the rubber grips provided on bicycle handle bars on his wheeled dolly for lifting an object such as a snowmobile. However, this is quite different from the caps placed on the end of the third means on the furniture lifter of the present invention to prevent scratching the floor. Further, there would be no motivation for covering the flattened end of the wreaking bar with a plastic sleeve as the unit as taught by Younick is designed for pulling flooring boards and sidings and a plastic sleeve would be useless.

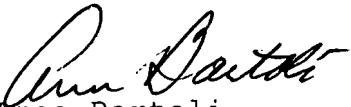
The present invention provides in claims 14 and 15 that the third means is made of a third predetermined material and, further, that such third predetermined material is polyethylene. Such third means is the substantially stationary means for pivoting and supporting the apparatus. This is the only mention of polyethylene in the present claims.

Christenson, on the other hand, teaches that the engagement plate 50 could be padded by a soft material such as rubber, foam cloth and soft plastics. The engagement plate 50 is that part which contacts the furniture to be moved and is not the third

member. The Examiner stated, "The examiner takes Official Notice that a common plastic is polyethylene." The Examiner's statement is probably true; however, it has nothing to do with the fact that the third means is made of polyethylene since Christenson makes no mention of the third means being polyethylene. There is no third means in the invention of Christenson similar to that of the present invention. Christenson teaches at least one wheel 45 coupled to the lifting device 10 at or near the vertex 35 which is essentially where the third means of the present invention is located. Thus, there is no teaching in any of the prior art references to even suggest that the third means would be made of polyethylene or any other plastic.

Therefore, Applicant respectfully requests the Board to reverse the Examiner's rejections of claims 3,5,12, and 15 under 35 U.S.C.103(a) as being unpatentable over Younick in view of Morgan and Christensen et al.

Respectfully submitted,
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(viii) APPENDIX

The claims on appeal are as follows:

1. (Original) An apparatus for applying an upward pressure to at least a portion of an object to be lifted which is at least sufficient to lift such object a predetermined distance, said apparatus comprising:

(a) at least one elongated rod member formed of a first predetermined material and having a first predetermined shape;

(b) a first means engageable with a first end of said elongated rod member for gripping said apparatus during use;

(c) a second means one of formed integrally with said elongated rod member as a single piece and engageable as a separate piece at a first end thereof with a second end of said elongated rod member and extending outwardly therefrom for engaging such object to be lifted, and

(d) a substantially stationary third means engageable with and disposed closely adjacent an intersection of said second end of said elongated rod member and said first end of said second means, said substantially stationary third means being positioned for supporting and pivoting said apparatus.

2. (Original) The apparatus, as claimed in claim 1, wherein said substantially stationary third means is positioned substantially perpendicular to said second means on an underside of said second means.

3. (Original) The apparatus, as claimed in claim 2, wherein said substantially stationary third means has plastic caps to cover each end portion of said substantially stationary third means.

4. (Original) The apparatus, as claimed in claim 1, wherein said first predetermined material is a material having a strength at least sufficient to lift at least between about 150 and about 300 pounds.

5. (Original) The apparatus, as claimed in claim 1, wherein said first means at least includes a rubber grip.

6. (Withdrawn) The apparatus, as claimed in claim 1, wherein a length of said at least one elongated rod member is adjustable.

7. (Withdrawn) The apparatus, as claimed in claim 1, wherein a length of at least one of said first means and said second means is adjustable.

8. (Withdrawn) The apparatus, as claimed in claim 1, wherein at least one of said first means and said second means is engageable with said elongated rod member by a ratchet arrangement whereby at least one of said first means and said second means can

be adjusted to a variety of angles.

9. (Original) The apparatus, as claimed in claim 1, wherein said second means is formed of a second predetermined material.

10. (Original) The apparatus, as claimed in claim 9, wherein said second predetermined material is identical to said first predetermined material.

11. (Original) The apparatus, as claimed in claim 1, wherein said second end of said second means includes a taper.

12. (Original) The apparatus, as claimed in claim 11, wherein said apparatus further includes a plastic sleeve to cover said taper to prevent damage to such item to be lifted.

13. (Withdrawn) The apparatus, as claimed in claim 11, wherein said taper has a V-shaped notch that is designed to remove nails.

14. (Original) The apparatus, as claimed in claim 1, wherein said substantially stationary third means further includes a third predetermined material.

15. (Original) The apparatus, as claimed in claim 14, wherein said third predetermined material is polyethylene.

16. (Original) The apparatus, as claimed in claim 1, wherein said first means is offset from said elongated rod member at a predetermined angle.

17. (Withdrawn) An apparatus for lifting at least a portion of one of furniture, appliances and movable wall structures, said apparatus comprising:

(a) at least one elongated rod member formed of a first predetermined material and having a first predetermined shape;

(b) a handle means engageable with a first end of said elongated rod member for gripping said apparatus during use; and

(c) an elongated leg member one of formed integrally with said elongated rod member as a single piece and engageable as a separate piece at a first end thereof with a second end of said elongated rod member and extending outwardly therefrom for engaging such object to be lifted, said elongated leg member being adjustable in at least one of an angular mode and a longitudinal mode.

18. (Withdrawn) The apparatus, as claimed in claim 17, wherein said apparatus further includes a base member disposed closely adjacent an intersection of said second end of said

elongated rod member and said first end of said elongated leg member, said base member being positioned for both supporting and pivoting said apparatus.

19. (Withdrawn) The apparatus, as claimed in claim 18, wherein said base member is positioned substantially perpendicular to said elongated leg member on an underside of said elongated leg member.

20. (Withdrawn) The apparatus, as claimed in claim 17, wherein said elongated leg member includes a ratchet arrangement for engagement with said elongated rod member thereby providing a variety of angles between said elongated leg member and said elongated rod member.

21. (Withdrawn) The apparatus, as claimed in claim 17, wherein said elongated leg member includes at least two telescoping members thereby providing a longitudinal adjustment.

22. (Withdrawn) An apparatus for lifting at least a portion of one of furniture, appliances and movable wall structures, said apparatus comprising:

- (a) at least one elongated rod member formed of a first predetermined material and having a first predetermined shape;
- (b) an elongated arm member one of formed integrally with

said elongated rod member as a single piece and engageable as a separate piece at a first end thereof with a first end of said elongated rod member and extending outwardly therefrom for gripping said apparatus during use, said elongated arm member being adjustable in at least one of an angular mode and a longitudinal mode; and

(c) an elongated leg member one of formed integrally with said elongated rod member as a single piece and engageable as a separate piece at a first end thereof with a second end of said elongated rod member and extending outwardly therefrom for engaging such object to be lifted.

23. (Withdrawn) The apparatus, as claimed in claim 22, wherein said apparatus further includes a base member disposed closely adjacent an intersection of said second end of said elongated rod member and said first end of said elongated leg member, said base member being positioned for both supporting and pivoting said apparatus.

24. (Withdrawn) The apparatus, as claimed in claim 23, wherein said base member is positioned substantially perpendicular to said elongated leg member on an underside of said elongated leg member.

25. (Withdrawn) The apparatus, as claimed in claim 22, wherein said elongated arm member includes a ratchet arrangement for engagement with said elongated rod member thereby providing a variety of angles between said elongated arm member and said elongated rod member.

26. (Withdrawn) The apparatus, as claimed in claim 22, wherein said elongated arm member includes at least two telescoping members thereby providing a longitudinal adjustment.

27. (Original) An apparatus for applying an upward pressure to at least a portion of an object which is at least sufficient to lift such object a predetermined distance, said apparatus comprising:

- (a) a first elongated rod member formed from a first predetermined material and having a first predetermined shape;
- (b) a first means engageable with a first end of said elongated rod member for gripping said apparatus during use;
- (c) a second elongated rod member one of formed integrally with said first elongated rod member as a single piece and engageable as a separate piece at a first end thereof to a second end of said elongated rod member; and
- (d) an elongated object engaging means engageable with said second elongated rod member closely adjacent a second end thereof for engaging at least a portion of a bottom surface of such object

to be lifted and for exerting an upward pressure to such object, said elongated object engaging means having a predetermined surface bearing area which is at least sufficient to prevent sidewise tipping of said apparatus during use.

28. (Withdrawn) An apparatus for removing a post imbedded in earth by applying an upward pressure to such post which is at least sufficient to lift such post a predetermined distance, said predetermined distance being at least sufficient to enable removing such post by hand, said apparatus comprising:

(a) a first elongated rod member formed of a first predetermined material and having a first predetermined shape;

(b) a handle means engageable with a first end of said first elongated rod member for gripping said apparatus during use;

(c) a second elongated rod member one of formed integrally with said first elongated rod member as a single piece and engageable as a separate piece at a first end thereof with a second end of said first elongated rod member and extending outwardly therefrom;

(d) a gripping means engageable with such post for gripping such post during removal;

(e) an engagement means disposed at a second end of said second elongated rod member for engaging said gripping means in order to exert an upward pressure on such post; and

(f) a substantially stationary combination support and pivot means engageable with and disposed closely adjacent an intersection of said second end of said first elongated rod member and said first end of said second elongated rod member for supporting and pivoting said apparatus.

29. (Withdrawn) The apparatus, as claimed in claim 28, wherein said gripping means and said engagement means are formed integrally as a single unit.



(ix) Evidence Appendix

NONE

(x) Related Proceedings Appendix